

Chapter 28E Agreements for Solid Waste Agencies

Iowa Dept. of Natural Resources

September 22, 2004

I. Basic provisions of an agreement for the joint exercise of governmental powers:

28E.5 Specifications.

Any such agreement shall specify the following:

1. Its duration.
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 12B.10 and 12B.10A through 12B.10C and other applicable law.
3. Its purpose or purposes.
4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
6. Any other necessary and proper matters.

II. Specialized provisions for solid waste agencies:

A. Comprehensive Plan Responsibilities.

Section 1. The Agency shall have the responsibility to establish and implement a comprehensive solid waste reduction program on behalf of the members. The Agency shall develop, file, and implement a comprehensive solid waste management plan pursuant to section 455B.306 of the Code of Iowa.

Section 2. The Agency shall have the authority to contract with and compensate consultants for professional services, including but not limited to engineers, attorneys, accountants, and all others necessary to carry out the purposes of this part.

Section 3. The members shall implement the recommendations and programs developed by the Agency which constitute the comprehensive solid waste reduction program and comprehensive solid waste management plan, at the direction of the Agency. The failure of a member to implement any such program, after being directed by the Agency to do so, shall constitute a violation of this agreement.

Section 4. The Agency shall submit the comprehensive plan to each member at least 60 days prior to filing said plan and each member shall acknowledge to the Agency that the member has reviewed said plan within 30 days of receipt.

Section 5. Each member shall provide to the Agency all information determined by the Agency to be necessary or beneficial to the development of the comprehensive solid waste reduction program and the solid waste management plan.

B. Financial Assurance Requirements

Section 1. The Agency shall have the duty to ensure compliance with the financial assurance requirements established by Iowa law for all facilities owned or operated by the Agency.

Section 2. In the event that the Agency has insufficient funds available to make the required yearly deposit into the closure or postclosure accounts, as required by law, each member shall be required to contribute such sums, apportioned on a per capita basis, as are necessary for the Agency to make the full yearly deposit as required by law.

Section 3. To the extent that the Agency's closure and post closure accounts are in compliance with Iowa law, a member withdrawing prior to the dissolution of the Agency shall have no further liability for closure or postclosure costs associated with any facility owned or operated by the Agency. For the purposes of this section, withdrawal prior to dissolution shall be defined as the withdrawal of one or more members at least 12 months prior to the initiation of dissolution pursuant to the terms of this Agreement.

Section 4. In the event that the Agency is dissolved pursuant to the terms of this Agreement prior to the accumulation of sufficient funds to satisfy all closure and postclosure costs for the facilities owned or operated by the Agency, the members shall retain liability for all additional costs in excess of the balances of the closure and postclosure accounts at the time of dissolution. Such additional costs shall be apportioned on a per capita basis. The members shall be jointly responsible for the maintenance of any financial assurance instruments required by law and shall contribute to the costs of those financial instruments on a per capita basis.

In the event that the facilities owned and operated by the Agency are to continue in operation after dissolution, the Agency shall not transfer said facilities without a transfer of all liability for future closure and postclosure care costs. Such a transfer of liability shall relieve the members of liability for future closure and postclosure care costs to the extent that the closure and postclosure care accounts are in compliance with Iowa law, with regard to both their form and balance amounts, at the time of sale and to the extent that said accounts are transferred to legal closure and postclosure care accounts of the purchaser of the facilities.

C. Hazardous Conditions. (In the section for withdrawal)

Section x. The withdrawing member will bear its proportionate share, as defined below, of all cleanup costs pertaining to the landfill site incurred at any time by the Agency, any member, the State of Iowa, the United States of America, or the political subdivisions of these entities. For purposes of this subparagraph, the term "cleanup costs" means costs incurred in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition. The terms "hazardous condition" and "hazardous substance" are assigned the meanings set forth in Section 455B.381 of the Code of Iowa (2003). For purposes of this subparagraph, a "proportionate share" of costs is defined as pro rata share based upon the total tonnage of waste brought by the member to the Agency's facility or facilities, as a percentage of the total tonnage of waste brought by all members to the facility.

D. Use of Agency Facilities.

Section 1. To the extent permitted by the Constitution and laws of the United States and the State of Iowa, all members shall require that the waste generated or collected within their jurisdictions shall be delivered to and deposited in the disposal facilities designated by the Agency in its comprehensive solid waste management plan.

Section 2. The Agency shall develop such ordinances, licensing agreements, or contracts as may be used by the members to ensure that the waste generated or collected within their jurisdictions is delivered to and deposited in the designated disposal facilities.

